

## **Chapter 8**

# **TITLE VI/NONDISCRIMINATION GUIDANCE FOR METROPOLITAN PLANNING ORGANIZATIONS**

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## 8.1 PURPOSE

This chapter provides guidance for reviewing metropolitan planning process consistency with Title VI of the Civil Rights Act of 1964 and other nondiscrimination authorities.

## 8.2 AUTHORITY

The authority providing for the joint certification of a metropolitan planning organization (MPO), including the area of Title VI, is found in **23 Code of Federal Regulations (C.F.R.) 450.334** (Self-Certifications and Federal Certifications).

## 8.3 REFERENCES

**20 United States Code (U.S.C.) 1681et seq., Civil Rights Restoration Act of 1987** (clarifying congressional intent to prohibit discrimination in all programs and activities of federal aid recipients, regardless of whether or not they are federally assisted)

**23 U.S.C. 324, Highway Act of 1973** (adding sex as a protected class and authorizing use of Title VI enforcement measures to sex discrimination)

**29 U.S.C. 701 et seq., Section 504 of the Rehabilitation Act of 1973** (prohibiting discrimination based on disability in federal funded programs or services)

**42 U.S.C. 2000d-2000d-7, Title VI of the Civil Rights Act of 1964** (providing that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from, participation in, or be denied the benefits of, or be subjected to discrimination under any program, or activity receiving Federal financial assistance)

**42 U.S.C. 6101 et seq., Age Discrimination Act of 1975** (prohibiting discrimination based on age in any federally funded program or activity)

**42 U.S.C. 12131 et seq., American with Disabilities Act of 1990** (prohibiting discrimination based on disability in programs or services operated by government entities)

**23 C.F.R. Part 200 et seq., State Transportation Agency Nondiscrimination** (codified Title VI for FHWA programs, services and activities)

**23 C.F.R. 450.316(b)(2), Planning Assistance and Standards** (requires that the metropolitan transportation planning process be consistent with Title VI and the Assurance executed by the State)

**49 C.F.R. Part 21 et seq., Nondiscrimination in DOT Assisted Programs** (codifies Title VI for US DOT programs, services and activities)

**49 C.F.R. Part 26, Disadvantaged Business Enterprise (DBE)** (establishes the federal guidelines for DBE participation in U.S. Department of Transportation funded contracts)

**49 C.F.R. Part 27, Nondiscrimination Based on Disability in US DOT Assisted Programs** (codifies ADA/504 for US DOT programs, services and activities)

**Executive Order 12898** (1994) (directing federal agencies to address disproportionately high and adverse human health or environmental effects in programs, policies, and activities on minority populations and low-income populations)

**Executive Order 13166** (2004) (requiring federal agencies to improve access to programs and services for those who are limited English proficient and to provide guidance to federal aid recipients on taking reasonable steps to provide meaningful access for those who LEP)

**DOT Environmental Justice Order 5610.2(a)** (2012) (reaffirming DOT commitment to EJ and providing steps to prevent and/or address disproportionately high and adverse effects to minority or low-income populations through Title VI analyses and environmental justice analyses conducted as part of Federal transportation planning and NEPA provisions)

**FHWA Environmental Justice Order 6640.23A** (2012) (providing the FHWA policies and procedures for use in complying with EO 12898)

**Title VI Assurance, DOT 1050.2** (executed by each FDOT secretary and committing to Title VI/Nondiscrimination compliance in all programs, services and activities)

**Title VI/Nondiscrimination Policy Statement** (this agreement can be found in Chapter 3 of the MPO Program Management Handbook, Appendix B)

**Title VI Program and Related Statutes Implementation and Review Procedure, 275-010-010-e**, Florida Department of Transportation (2005)

**Disadvantaged Business Enterprise Program Plan, Florida Department of Transportation**

**Limited English Proficiency Plan, Florida Department of Transportation**

## **8.4 SCOPE**

This chapter is for the use of Department planning staff when reviewing metropolitan planning process consistency with Title VI of the Civil Rights Act of 1964 and related nondiscrimination authorities. It is also intended to provide guidance to MPOs on developing and maintaining compliance nondiscrimination programs and services.

## **8.5 CERTIFICATION OF MPO PLANNING PROCESS CONSISTENCY WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

Pursuant to [23 C.F.R. 450.334\(a\)\(3\)](#), the Florida Department of Transportation and each MPO must "...annually certify to the Federal Highway Administration (FHWA) that the planning process is addressing the major issues facing the area and is being conducted in accordance with all applicable requirements of ... Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by each State under [23 U.S.C. 324](#) and [29 U.S.C. 794](#) ..."

## **8.6 TITLE VI & RELATED STATUTES NONDISCRIMINATION REQUIREMENTS**

### **8.6.1 Nondiscrimination Agreement**

As a sub-recipient of the Florida Department of Transportation, each MPO is required to sign a Title VI and Related Statutes Nondiscrimination Agreement with the State to assure Title VI and related statutes compliance. The form/agreement is entitled [Title VI and Related Statutes Nondiscrimination Agreement](#) and can be found in Chapter 3 and 8 of the MPO Program Management Handbook and also on the Office of Policy Planning website at: <http://www.dot.state.fl.us/planning/policy/metrosupport/titlevi.pdf>.

The Nondiscrimination Agreement acts as the MPO's Title VI Plan pursuant to [23 C.F.R. Part 200](#) and the Federal Highway Administration's Title VI Implementation Guide. It lists all of the Title VI requirements that an MPO agrees to perform in return for receiving Planning (PL) funds from the State, including Title VI Assurances, nondiscrimination policy statement and a discrimination complaint procedure. The agreement also contains Appendices that must be included in all MPO bids, contracts, subcontracts and agreements. The MPO is not only responsible for ensuring its own contracting documents have the required insertions, but also that any subcontracts also contain them.

The Title VI and Related Statutes Nondiscrimination agreement must be signed annually by the MPO's signature authority, and submitted to the Office of Policy Planning. The Districts' Planning staff is encouraged to work with the respective FDOT District's Title VI Program Area Officer in Planning to review the MPOs updated Title VI Nondiscrimination Agreement annually to ensure compliance with the Title VI Program and Related Statutes.

### **8.6.2 Nondiscrimination Policy**

MPOs must develop and post for public view a policy that states that the MPO will not discriminate in any program, service or activity on the basis of race, color, national

origin, sex, age, disability, religion or family status. While an MPO website is a good repository for this information, it should not be the only location as not all members of the public have computer access [\[23 CFR 200.9\(b\)\(3\)\]](#).

### **8.6.3 Title VI/Nondiscrimination Coordinator**

MPOs must appoint a Title VI/Nondiscrimination Coordinator who has easy access to the MPO Executive Director. The Coordinator should be listed in the MPO Public Involvement Plan by name and contact information, and have a responsible position within the organization. While the Coordinator may report to a lower level supervisor in other professional duties, he or she must be able to directly and easily access the head of the MPO when possible discrimination issues arise [\[23 CFR 200.9\(b\)\(4\)\]](#).

### **8.6.4 Nondiscrimination Complaint Procedure**

MPOs must develop and post a procedure for accepting and processing complaints of discrimination based on race, color, national origin, sex, age and disability.<sup>1</sup> [\[23 C.F.R. 200.9\(b\)\(3\), \(b\)\(14\) and \(b\)\(15\)\]](#). MPOs have the flexibility to develop a procedure that corresponds to the organization's operations with two limitations:

- a. MPO's administrative processing of complaints should be time sensitive, never exceeding more than 90 days [\[23 CFR 200.9\(b\)\(15\)\]](#).
- b. Copies of all MPO nondiscrimination complaints should be provided to the FDOT District Title VI/Nondiscrimination Coordinator. The FDOT Coordinator is an important resource who can assist with investigation and resolution. The Coordinator is also responsible for recording, tracking and reporting complaint status to FDOT Central Office and FHWA [\[23 CFR 200.9\(b\)\(3\)\]](#).

### **8.6.5 Annual Reviews of Nondiscrimination Program**

Before signing annual Certification of MPO Planning Process Consistency with Title VI of the Civil Rights Act of 1964 (See 8.5), the MPO should review each program area (Public Involvement, UPWP, TIP, Bike/Ped Master Plan and LRTP) to ensure nondiscrimination. The MPO should review demographic data, measures of effectiveness matrices, committee reports and other available documentation to ensure that its programs, services and activities in these areas during the year were free from discrimination [\[23 CFR 200.9\(b\)\(5\)\]](#).

### **8.6.6 Nondiscrimination Training**

The MPO's Title VI/Nondiscrimination Coordinator should provide or arrange for periodic staff training in nondiscrimination. Both FDOT and FHWA can be helpful

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1. Note that this procedure does not include accepting or processing complaints based upon access to programs and services for those who are Limited English Proficient or complaints based upon Environmental Justice.

resources, as can videos and other training aids. The Coordinator may choose to target training to particular areas such as Environmental Justice, Limited English Proficiency, complaint investigation or public outreach. MPOs have flexibility in determining their nondiscrimination training needs and in choosing appropriate resources.

### **8.6.7 Outside Reviews**

MPOs should always be prepared for pre or post grant reviews of MPO nondiscrimination activities by federal funding agencies including but not limited to US Department of Transportation modal agencies [[23 C.F.R. 200.9\(b\)\(13\)](#) and [49 C.F.R. 21.11](#)].

## **8.7 DOCUMENTATION AND RECORD KEEPING**

The easiest and most effective manner of demonstrating compliance is through documentation of nondiscrimination policies, procedures, outreach and other similar information. MPOs may find it useful to keep a nondiscrimination notebook or computer file containing all relevant material. Some examples of important items the MPO may wish to include are:

- All complaint information, including a tracking log of complainant, date of complaint, basis for complaint and complaint disposition.
- A scrapbook of outreach events intended to increase participation and solicit feedback from low income and minority communities.
- Measures of effectiveness reports detailing representative public involvement.
- Lists of MPO committee members by race, ethnicity, age and whether or not disabled.
- Updated community characteristics surveys showing the MPOs geographic area broken down by socioeconomic factors.
- Community Impact Assessments that evaluate the enhancements and negative impacts of the MPOs plans.
- The MPOs LEP, Title VI, EJ and nondiscrimination assurance documents. Samples of the MPO's meeting advertisements, contracts, and other documents containing nondiscrimination information.
- Records of all internal and external Title VI/Nondiscrimination reviews, results and corrective action, if any.
- Lists of staff nondiscrimination training including the date, number of attendees and the training subject.
- Documents showing strong practices, lessons learned, nontraditional partnerships, etc.

## 8.8 LIMITED ENGLISH PROFICIENCY (LEP)<sup>2</sup>

**Executive Order 13166** as well as Department Of Justice (DOJ) Guidance from August 2000 requires federal agencies and their recipients to take reasonable steps to provide meaningful access to programs and services for those who are Limited English Proficient or LEP. In order to comply, MPO's must develop and post a written LEP plan that included analysis of the following four factors:

1. Number or proportion of LEP persons eligible to be served or likely to be encountered by the program or service;
2. Frequency with which LEP individuals come in contact with the program;
3. Nature and importance of the program, activity, or service provided by the program to people's lives; and the
4. Resources available to the recipient and costs.

The vast geography and diversity of Florida means that no one LEP plan can serve for the entire state. MPO's must use the four factors in conjunction with their area demographics, PPP, measures of effectiveness, community partners and funding to determine when and to what extent LEP services are required. Both FHWA and U.S. DOJ have websites that can assist MPOs with plan development. See <http://www.fhwa.dot.gov/civilrights/programs/lep.cfm> or [www.lep.gov](http://www.lep.gov).

LEP plans are essentially tools for providing better customer service, obtaining more representative public input and demonstrating Title VI compliance. The Plans should effectively discuss the four factor analysis and list the steps, activities or other resources the MPO uses to provide meaningful access. LEP plans must be available for public access and comment, and should use plain language. Plans should not be needlessly long, or contain so much background or legal information that it creates a barrier to public understanding.

Though not required by the Executive Order or related Memoranda, MPOs may choose to comply with 'safe harbor' provisions. Safe harbors are affirmative defenses to a finding of noncompliance by demonstrating written translation of all vital documents based on the size of an LEP population. The safe harbor *only* applies to written translation of documents and when all vital documents are translated where there is an LEP language group constituting 5 percent or 1,000 persons, whichever is less.

Given the size and scope of MPO vital documents (LRTP, TIP, etc.), full translation could be cost prohibitive. Therefore the MPO should carefully consider the wisdom of safe harbor compliance and whether other reasonable steps might better or more effectively provide LEP compliance.

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2. This guidance on LEP is provided within Chapter 8 for ease of reference. Note that certification of LEP is not required by 23 C.F.R. 450.334, but is required by Executive Order 13166.



[Note: Oral interpretation services have no safe harbor. Moreover, FDOT requires that, regardless of the LEP plan, that sub-recipients provide oral translation services, free of charge, when requested with reasonable notice.]

Finally, like all nondiscrimination programs and plans, LEP Plans are living documents that must change to reflect changing communities and their needs. As such, the MPO should review its LEP Plan annually to ensure that its four factor analysis remains accurate and that the Plan is effective.

## 8.9 ENVIRONMENTAL JUSTICE (EJ)<sup>3</sup>

**Executive Order 12898**, first issued in 1994, was reaffirmed by the White House in 2011. Subsequently, a consortium of federal agencies, including U.S. DOT, participated in a working group to revise and update EJ guidance for its modal agencies and for recipients of federal assistance, including MPOs. The result was the **U.S. DOT Order on EJ, 5610.2(a)** (May 2012) and **FHWA Order on EJ, 6640.23A** (May 2012). The goals of EJ remain constant:

- To avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority populations and low-income populations.
- To ensure the full and fair participation by all potentially affected communities in the transportation decision making process.
- To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.

However, U.S. DOT updated its policy, stating that it will “promote the principles of environmental justice (as embodied in the Executive Order) through the incorporation of those principles in all DOT programs, policies, and activities ... fully considering environmental justice principles throughout planning and decision-making processes in the development of programs, policies, and activities.” The Order also requires the collection and analysis of demographic data (race, color, national origin, and income level) through existing statutory and regulatory authority to ensure that EJ objectives are achieved.

MPOs have two essential responsibilities with regard to EJ:

1. Outreach: MPO’s must ensure and document early, continuous and meaningful opportunities for involvement by minority and low income communities.
2. Data Collection and Analysis: MPOs must scrutinize demographic data to ensure that planning activities will not have disproportionately high or adverse impacts on underserved communities and, where impacts are unavoidable, that documented steps are taken to avoid, minimize or mitigate impacts.

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3. This guidance on LEP is provided within Chapter 8 for ease of reference. Note that certification of EJ is not required by 23 CFR 450.334, but is required by Executive Order 12898.



To implement these efforts, the MPO should use all reasonable and available means at their disposal to better understand the demographics and needs of the communities within their areas. Sources of information may include but not be limited to Census and/or American Community Survey data; information collected and maintained by school, emergency and social service providers; religious, community or charitable organizations; planning and/or community development committees and boards; homeowners and civic groups; surveys, blogs and other social media sources.

The MPO will find it helpful to create a Community Characteristics Inventory (CCI) to both better identify underserved communities and potential partner organizations that may serve or have more information about the community. Once complete, the MPO should then use the CCI to analyze transportation plans, listing the benefits and impacts of its plans on the underserved communities, and assessing whether or not they are disproportionately high or adverse.

As with all nondiscrimination programs and activities, MPOs should annually examine their EJ strategy for effectiveness, including ensuring that it captures significant changes in the area's minority and low income populations. More information on EJ compliance may be found at:

[http://www.fhwa.dot.gov/environment/environmental\\_justice/ej\\_at\\_dot/order\\_56102a/](http://www.fhwa.dot.gov/environment/environmental_justice/ej_at_dot/order_56102a/)

## **8.10 AMERICANS WITH DISABILITIES ACT (ADA) AND RELATED AUTHORITIES**

MPO programs and services may not exclude from participation in, deny the benefits of or subject to discrimination anyone on the basis of a disability. Moreover, the MPO has the responsibility of providing reasonable accommodation to those with disabilities who require special services to access information or participate in MPO activities. The following are requirements of all government entities, including MPOs:

1. Assurances – **49 C.F.R. 27.9** requires all federal aid recipients to complete a nondiscrimination assurance stating that programs and activities will be conducted in compliance with ADA. If the MPO has executed the FDOT Nondiscrimination Agreement (which specifically includes disability), it need not sign a separate ADA Assurance.  
<http://www.dot.state.fl.us/planning/policy/metrosupport/titlevi.pdf>
2. Nondiscrimination policies and complaint procedures – **49 C.F.R. 27.13** requires federal aid recipients to develop a nondiscrimination policy and complaint filing/process procedure for disability. Recipients must also name a responsible person to coordinate disability nondiscrimination activities. While this part only applies to entities with fifteen (15) or more employees, all MPOs are encouraged to comply. Note, if the MPO has a comprehensive complaint policy and procedure that includes disability, and has named a Title VI/Nondiscrimination Coordinator, then it need not develop separate policies and procedures wholly for disability.

3. Notice – **49 C.F.R. 27.15(b)** require all publications or other general information for public distribution to contain a notification statement that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and services. Recipients must also provide upon request reasonable accommodation for access to programs and services for those with disabilities. The Department has developed a comprehensive statement for use on all public documents, stating that:  
*The MPO does not discriminate on the basis of race, color, national origin, sex, age, religion, disability and family status. Those with questions or concerns about nondiscrimination, those requiring special assistance under the Americans with Disabilities Act (ADA), or those requiring language assistance (free of charge) should contact [enter Title VI/Nondiscrimination Coordinator or Public Information Office] at (XXX) XXX-XXXX or [coordinator@anympo.org](mailto:coordinator@anympo.org).*
4. Transition Planning - MPOs generally do not have control over existing sidewalks or roadways. Further, they do not often employ fifty (50) or more employees. Therefore, the Department does not require the MPO to comply with **28 C.F.R. 35.105** or **28 C.F.R. 35.150(d)**. These sections require government entities to conduct self-evaluations of their programs, services and activities, including public rights of way, and develop a transition plan to track and remediate inaccessible features. However, MPOs should develop program access plans to ensure that MPO facilities and services are accessible to those with disabilities. Further, despite size and other factors limiting applicability of the C.F.R., MPOs may serve an essential role in providing technical assistance to local agencies within their jurisdiction and also improve livability for communities that are disabled. Examples of assistance that MPOs can provide are:
  - Roadway surveys and other information regarding accessibility and connectivity of sidewalks.
  - Gather and distribute input from partner organizations that serve the community that is disabled.
  - Crash and other data related to high priority pedestrian areas.
  - Safety outreach to schools, neighborhoods, community service groups and other similar organizations.
  - Ensuring that Bike/Ped Master Plans are shared with (or plan input gathered from) public works and maintenance departments of the local agencies within MPO jurisdiction.

## 8.11 DISADVANTAGED BUSINESS ENTERPRISE (DBE)

**49 C.F.R. Part 26** establishes the federal guidelines for participation of Disadvantaged Business Enterprises (DBEs) in U.S. Department of Transportation funded contracts. As a recipient of federal planning funds and because DBE is one of the five core areas of MPO certifications, MPOs are impacted by these requirements [**23 C.F.R. 450.334**].

While MPOs may be direct recipients of some modal grants, thereby requiring the development of a DBE Program Plan and goal, all FHWA funding provided to MPOs through FDOT are subject to FDOT's DBE Program Plan. No alternative DBE plan may be used for FHWA funds without express approval from FDOT and FHWA.

Per **49 C.F.R. 26.51(f)**, where State Transportation Agencies achieve their overall goals through race neutral means for two consecutive years, they must continue a race neutral program until they can no longer achieve the approved goal. Since 2000, FDOT has operated an entirely race neutral DBE program in that it achieves DBE goals through the normal competitive bid process. This means that MPOs must ensure that their procurement and contracting documents carefully follow FDOT's specifications and that they do not specify a project goal or contract sanctions for failing to meet DBE availability.

MPOs in Florida are not certifying members of the Unified Certification Program (UCP), and therefore need only determine that DBE contractors and subcontractors are certified as DBEs in the area of work required by the MPO. MPOs should check BizNet at <https://www3.dot.state.fl.us/EqualOpportunityOffice/biznet/mainmenu.asp> to ensure certification or contact FDOT's supportive services providers for more information. The Equal Opportunity Office DBE website has relevant contact information at: <http://www.dot.state.fl.us/equalopportunityoffice/>.

### **8.11.1 DBE Contract Assurances**

Under **49 C.F.R. 26.13**, MPOs are required to have a signed policy statement expressing their commitment to DBE participation. A sample statement is included at the end of this chapter as well as the UPWP chapter of the MPO Program Management Handbook (Chapter 3). MPOs are required to sign the statement on an annual basis. The same federal regulation at **49 C.F.R. 26.13(b)** requires that each contract that an MPO signs with a consultant and/or subconsultant include the following assurance:

"The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of **49 C.F.R. Part 26** in the award and administration of USDOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate."

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**Appendix A: PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES  
IN DEPARTMENT OF TRANSPORTATION FINANCIAL  
ASSISTANCE PROGRAMS**

It is the policy of the (insert name of MPO) that disadvantaged businesses, as defined by **49 Code of Federal Regulations, Part 26**, shall have an opportunity to participate in the performance of MPO contracts in a nondiscriminatory environment. The objectives of the Disadvantaged Business Enterprise Program are to ensure non-discrimination in the award and administration of contracts, ensure firms fully meet eligibility standards, help remove barriers to participation, create a level playing field, assist in development of a firm so it can compete successfully outside of the program, provide flexibility, and ensure narrow tailoring of the program.

The (insert name of MPO) and its consultants shall take all necessary and reasonable steps to ensure that disadvantaged businesses have an opportunity to compete for and perform the contract work of the (insert name of MPO) in a non-discriminatory environment.

The (insert name of MPO) shall require its consultants to not discriminate on the basis of race, color, national origin, and sex in the award and performance of its contracts. This policy covers in part the applicable federal regulations and the applicable statutory references contained therein for the Disadvantaged Business Enterprise Program Plan, Chapters **337** and **339**, Florida Statutes, and **Rule Chapter 14-78, Florida Administrative Code**. Please locate the official form on the MPO Metropolitan Planning website at: <http://www.dot.state.fl.us/planning/policy/metrosupport/dbe.pdf>